

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JESSE COUNCE,

Plaintiff,

v.

CASE NO. 18-3244-SAC

SHAWANNA POWELL, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Jesse Counce, a pretrial detainee being held at the Allen County Jail in Iola, Kansas, brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff proceeds *in forma pauperis*. Plaintiff's complaint (ECF No. 1) alleges he has been falsely accused, falsely imprisoned, defamed, and harassed. He names Shawanna Powell and Detective B. Christian as defendants. Mr. Counce states he met Shawanna Powell through an online dating site, decided he did not wish to pursue a relationship after meeting her in person, and did not respond to subsequent calls and text messages from her. Plaintiff alleges she then made false accusations to the police and "got [him] arrested." ECF No. 1 at 3. Mr. Counce further alleges Defendant Christian "didn't do any investigating" before arresting him, other than "running his name." *Id.* Plaintiff claims he was in Atlanta, Georgia, on October 18, 2017 (apparently the date of the alleged battery).

On October 30, 2018, the Court entered a Memorandum and Order to Show Cause (MOSC) (ECF No. 7), ordering Plaintiff to show cause by November 29, 2018, why his complaint should

not be dismissed due to the deficiencies set forth in the MOSC. The MOSC stated that if Plaintiff failed within the time allotted to file a response, this action could be dismissed without further notice. Plaintiff has not responded to the MOSC.

As explained in the MOSC, Plaintiff's request for the Court to intervene in a pending state criminal prosecution must be denied based on the *Younger* abstention doctrine. *See Younger v. Harris*, 401 U.S. 37, 45 (1971). Moreover, Mr. Counce's claims against Ms. Powell must be dismissed because she is not a state actor and therefore not subject to liability under § 1983. *See West v. Atkins*, 487 U.S. 42, 48–49 (1988); *Brentwood Academy v. Tennessee Secondary Athletic Ass'n*, 531 U.S. 288, 294–96 (2001).

For the reasons stated herein, Plaintiff's complaint must be dismissed.

IT IS THEREFORE ORDERED that this action is dismissed without prejudice.

IT IS SO ORDERED.

DATED: This 10th day of December, 2018, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge